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THE GOLDEN JUBILEE OF THE MADRAS ADVOCATES' ASSOCIATION

FIFTY YEARS OF EVENTFUL LIFE.*

BY

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The Madras Advocates' Association is but the continuation of the Madras High Court Vakils' Association which was started in the eighties of the last century, though now carried on under a different and more comprehensive name. The completion of fifty years of existence in the life of an institution is an event which deserves to be celebrated, especially in this country of short-lived associations, and must be a matter of rejoicing to the members of the Association. Though it is twenty-seven years since I left the Bar and I have been out of touch with the members of the profession and have not entered the precincts of the High Court more than four or five times during this period, I have not lost my interest in the welfare of the Association. Advancing years and the incidental infirmities have made me very chary of undertaking any onerous tasks. But I was reminded by my friend Mr. V. V. Srinivasa Aiyangar that I was the seniormost surviving member of the Madras High Court Vakils' Association, and he pressed upon me the propriety of my presiding at this function. As I could not deny

* The Presidential address of Sir P. S. Sivaswami Aiyar on the occasion of the celebration of the Golden Jubilee of the Madras Advocates' Association on 19th February, 1939.

the soft impeachment of my seniority, I had to overcome my reluctance and accept the penalties of my standing.

The High Court Vakils' Association, which is now functioning under the name of the Advocates' Association, was started in April, 1889, though it was incorporated under the Literary and Scientific Societies Registration Act only in March, 1908. It must not, however, be supposed that the Vakils had not formed an association before 1889. To the best of my recollection, there was a Vakils' Association in existence at the time of my enrolment in April, 1885, and Mr. S. Gopalachariar was its Secretary. When he left Madras on his appointment as a Sub-Judge, Mr. K. P. Sankara Menon, who subsequently became a Judge of the High Court of Travancore, was appointed as Secretary. For some reason or other the Association ceased to function and became defunct. In March, 1889, we wished to revive and reorganise the Vakils' Association for the purpose of mutual co-operation and better safeguarding of the interests of the profession. The objects of the Association were declared to be to maintain a high standard of professional conduct, to protect and promote the interests of Vakils, to make representations to the authorities on matters affecting the profession and to form and maintain a library. My friend the late Mr. V. Krishnaswami Aiyar was the first Secretary of the new Association, and he continued to be the Secretary till 1901. The organisation and successful working of the Association was in large measure due to the personality and boundless energy of Mr. Krishnaswami Aiyar.

One of the first fruits of the activities of the Association was the privilege accorded to Vakils to wear gowns. This was the first step taken to remove our grievance that though the Vakils were in no way inferior in learning or ability to the barristers who were regarded as the senior branch of the profession, we were treated as occupying an inferior status. The representations that we made from time to time met with a sympathetic response from the Chief Justice, Sir Arthur Collins. The formation of a library for the Association, which has now expanded to respectable proportions, the total number of volumes being over 30,000, was the result of the member's subscriptions and donations, and helped to draw the members together closer and impart a sense of proprietary interest in the properties of

the Association and an element of permanence to the Association. Towards the end of 1889 we succeeded in getting from the Chief Justice two rooms in the Court house for the accommodation of the Association and its library. When the Association was founded in 1889, the High Court was located in the block of buildings opposite the harbour in which the Income-tax Office, the Collector's Office and a number of other miscellaneous offices are now housed. The two rooms assigned to us were on the ground floor near the northern end; and of the two, the room facing the sea had to be vacated during the trial of sessions cases for the accommodation of jurors. There was no room in the old High Court for Vakils' offices and we had our offices in rented buildings in the streets and lanes in the purlieus of the High Court. When the High Court was shifted to the palatial buildings which now adorn the Esplanade and the sea front, the Government were good enough to construct chambers for the Vakils within the precincts of the High Court.

In my earlier remarks I referred to the grievance of Vakils with regard to the status of inferiority assigned to them, compared with the barristers' branch of the profession. This grievance was very keenly felt, though it was of a sentimental character. It has now been practically removed by the Bar Councils Act which has brought about the unification of the different branches of the profession. In passing I may mention that in 1895 a proposal was made that Vakils of a certain standing might be allowed by the High Court to be enrolled as Advocates. This proposal was rejected by us, and in my opinion rightly, on the ground that it would relegate the large majority of Vakils to a distinctly lower category and would militate against our attempts to win a position of equality with the Advocates' branch of the profession for the whole body of Vakils.

In respect of substantial rights and privileges the position of the Vakils in Madras has always been one of decided superiority to that of the Vakils in the High Courts of Calcutta and Bombay. When the High Court of Madras was constituted in supersession of the old supreme Court and the sudder Court, rules were framed by the High Court for the admission of Advocates, Vakils and Attorneys, and under these rules Vakils were entitled to plead and act on the original and appellate

sides and on the criminal side of the High Court. The right of Vakils to appear in appeals from the decisions of the Insolvency Commissioner to the High Court had been recognised, but their right to appear before the Insolvency Commissioner was not recognised for many years, until after it was raised and thrashed out in the sixth volume of the Madras Law Journal.

The qualifications laid down for admission as a Vakil in the first set of rules framed by the High Court were the attainment of the B.L. degree and, in addition, (*a*) a certificate of having subsequently studied for six months with an Advocate of the High Court or a Vakil entitled as such to practise on both the original and appellate sides and for a further period of six months in the office of an Attorney, or (*b*) a certificate of having studied for twelve months either with an Advocate or a Vakil entitled as such to practise as aforesaid or in the office of an Attorney, or (*c*) a certificate signed by the Registrars on the original and appellate sides of regular attendance upon the sittings of the Court in accordance with the rules prescribed in that behalf for two years subsequently to the attainment of the degree. An alternative qualification was the production of a certificate of having kept six terms at one of the inns of Court in London and of regular attendance on the course of law lectures while keeping such terms, as also a certificate of having passed one of the examinations provided for students, together with a certificate of subsequent study for nine months with an Advocate of the High Court at Madras or a Vakil entitled as such to practise on both the original and appellate sides or in the office of an Attorney. A certificate of good character and conduct signed by the Advocate, Vakil or Attorney was an essential requirement in all the aforesaid cases.

Except in the matter of precedence and pre-audience, Vakils of our High Court were on a footing of equality with Advocates who were then regarded as the senior branch of the profession. There was no question as to the eligibility of Vakils for any of the law offices of the High Court, but as a matter of practice, all the law offices were treated as a close preserve for European barristers. The first time that a High Court Vakil was appointed as Government Pleader in the High Court was when the late Sir S. Subrahmanya Aiyar was appointed to act as Government Pleader during the absence of Mr.

E.B. Powell, the permanent incumbent. So far as the Advocate-Generalship was concerned, there was a delusion, bred by the use of the term 'Advocate' as part of the designation of the office, that Vakils were not eligible for the office. This belief was exploded by the appointment of Sir V. Bashyam Aiyangar as officiating Advocate-General in 1897. The credit of the discovery of the eligibility of Vakils was due to Sir Bhashyam Aiyangar, and the merit of the courage to act upon this discovery belonged to Sir Arthur Havelock who was one of the most liberal-minded Governors of this Presidency. Various protests against this appointment were made by the Barristers who contested the eligibility of the Vakils, but they failed as they deserved. By an irony of fate Sir Bhashyam Aiyangar was not appointed to the office when a permanent vacancy arose, and on the next two occasions barristers were appointed by the Secretary of State. But since 1907 the office has been always held by a Vakil, except once. It is a matter for satisfaction that except the Government Solicitorship, the Public Prosecutorship and the Chief Law Reportership, all the law offices are now held by Vakils.

After the passing of the Bar Councils Act and the unification of the different branches of the profession, there were no invidious distinctions between Vakils and Barristers with regard to their eligibility to any law office. Douhts as to their eligibility for the Chief Justiceship have been removed by the Government of India Act of 1935.

The higher status of the Vakils in the legal profession as compared with the Vakils in Bombay and Calcutta is due to the broad-minded spirit of the rules framed by the High Court of Madras when it was formed in 1862. The improvement in the status of the Vakils is due to the abilities and attainments of the members of this branch of the profession from the earliest times, not a few of whom rose to eminence. No Vakils contributed more to raise the esteem and prestige of the Vakil Bar than Sir V. Bashyam Aiyangar, the prince of lawyers, and Sir S. Subrahmanya Aiyar his illustrious rival.

A few facts about the High Court as it was first constituted may be of interest to you. The High Court consisted only of five judges including the Chief Justice. The number of judges was raised by one in 1896, by one more in 1907 and

another was added in 1908. It has since been raised from time to time until it now stands at fourteen including the Chief Justice, being only one less than the maximum fixed by the Government of India Act of 1935.

The first volume of the Madras High Court Reports contains some interesting information about the number of cases decided by the High Court during the period of 16½ months which elapsed from the opening of the High Court to the 31st of December, 1863. On the original side 179 suits and 174 sessions cases were disposed of. On the appellate side 112 regular appeals, now called first appeals, and 1201 special appeals, now called second appeals, were disposed of. The number of regular appeals pending at the end of the period was 63, and of special appeals, 239. I omit any reference to the figures relating to civil and criminal petitions and other miscellaneous matters. In the year 1937, the number of original suits disposed of was 385, of first appeals 826, of second appeals 1049, of civil miscellaneous appeals 409, and of original side appeals 48. Whether any and what inferences can be drawn from these statistics as to the increase or decrease in the volume of litigation, the requisite strength of the High Court and the prospects of the legal profession are matters which must be left for investigation by those who have more curiosity and patience than I possess. I express no opinion on the question whether the decrease in the volume of litigation is due to causes affording room for satisfaction to the public or the reverse and whether they are of temporary or permanent operation. I must refrain from further discussion of a delicate question which may possibly have a repercussion on the happy harmony that prevails between the Bench and the Bar.

The rights and privileges of the Vakil branch of the profession in Calcutta and Bombay compare unfavourably with those of the Vakils in Madras. Though there have been Vakils' Associations in Calcutta and Bombay, I have not been able to obtain any account of their history and activities. As regards Bombay, I learn that a Vakils' Association was formed in January, 1864, with the object of raising and maintaining the professional status of its members, diffusing professional information and promoting amelioration of the laws affecting the constitution of the Courts and forensic practice. Mr. Dhirajlal

Mathuradas, Rao Saheb Visvanath Narayan Mandlik, Mr. Shanta Ram Narayan and Mr. Nanabhai Haridas were among the foundation members of the Association. The second and third gentlemen became Government Pleaders and the last became a High Court Judge, and their names are all well known to readers of the Bombay Law Reports. The first native of India to be appointed to the High Court of Bombay was Mr. Janardan who was a judge of the Court of Small Causes. It is curious that the terms of the congratulatory address which was given to Mr. Justice Janardan when he took his seat on the Bench were previously considered and approved at a joint meeting of the Pleaders' Association and the Vakils' Association of Western India.

It may be of interest to you to learn something of the conditions of the Vakils' profession, its opportunities, the incomes of the members at the top and the struggles of the juniors. To a large extent my information is based upon hearsay. So long as Sir V. Bashyam Aiyangar was at the Bar, he commanded the most lucrative practice, and I have been told that at the height of his practice his income did not much exceed an average of Rs. 10,000 a month. The post-war boom in prices greatly raised the fees of lawyers and I believe the peak in lawyers' incomes was reached by the late Sir K. Srinivasa Aiyangar, who told me himself that he was making Rs. 20,000 per mensem. I have heard that in England also the income of the top-most men in the Bar during the post-war years reached heights never before known in the history of the Bar. The income of Sir John Simon when he was the leader of the Bar was far higher than that of Sir Rufus Isaacs who afterwards became Lord Reading. I do not know whether the economic depression which set in ten years ago has affected the incomes of leading Advocates in Madras. So far as the juniors are concerned, it would be wrong to imagine that the juniors of the previous generations did not have to face any struggles. In one respect conditions were less unfavourable. The number of Vakils practising in Madras in former years bears no comparison with the number of those practising at the present time. The number of Vakils practising in Madras in the first year after my enrolment in 1885 was about 75. In 1889 when the Vakils' Association was formed, the number was somewhere about 100, of whom 59 were members of the Association.

According to the annual list for 1938, the total number of persons enrolled as Advocates is 3790, and the number of those practising in Madras is said to be about 1600, of whom 610 are members of the Association. *Prima facie* the number of practitioners is far in excess of the volume of litigation coming before the Courts which seems to have been steadily going down. Even so early as 1897, the Madras Law Journal complained of the overcrowding at the Bar. How much more is that complaint justified at the present time? The causes of overcrowding are well known, the principal of them being the dearth of alternative walks of life suitable for our educated young men. Another cause is the attraction held out by the large incomes made by the great leaders of the profession. Many a fond parent wishes his son to enter a profession which holds out prospects of making a fortune or at least a substantial income. Our people are great believers in luck, and a parent often asks why his son should not be lucky enough to attain the same success as Sir V. Bashyam Aiyangar or Sir S. Subrahmanya Aiyar. Probabilities do not enter into his calculation and he is not deterred by risks of failure. Too often he thinks that his son has as good qualifications as any of the men at the Bar who have risen to eminence. It is not realised that success at the Bar does not depend merely upon one's qualifications or intrinsic merits, but upon the opportunities that a man can get for the display of his abilities and attainments. Limited as such opportunities were in my time, they are obviously far more limited to-day. Unless a beginner has influential relations or connections or can get the chance of devilling to appreciative and generous leaders in the Bar, he has no means of making himself known to the client world or to the judges of the Courts. The rules of professional ethics forbid recourse to questionable practices like touting, canvassing, soliciting or advertising. You are often told that patient merit will be eventually rewarded. Is it surprising that the struggling junior regards this saying as a mere pious platitude? Merit without opportunity is destined to languish and suffer the agony of blighted hopes and a wasted life. The spectacle of hundreds of young men suffering from unemployment and without any reasonable prospect of success is positively distressing. Is it possible to hold out any message of good cheer to lift the burden of their worries and anxieties? This aspect has recently engaged the attention of eminent lawyers and judges all over India. So far as future

entrants are concerned, the most helpful suggestion is the restriction of the numbers of lawyers. How the restriction is to be brought about is a matter for earnest consideration. The result will be achieved to a large extent by the relentless operation of economic laws and the cruel principle of survival of the fittest. a principle which, in spite of its truth, involves great difficulty in framing a satisfactory definition of fitness. The number of candidates for admission to the Law College or to the Bar will necessarily decline when our young men and their parents are convinced that the profession is enormously glutted and that there are other walks of life offering comparatively better chances of remunerative employment. As regards the young men who have already joined the Bar and are struggling for their livelihood, advice has been tendered with the object of alleviating their position, in the presidential address of the Rt. Hon'ble Sir Tej Bahadur Sapru at the Allahabad Lawyers. Conference held in November last and in the presidential address of Sir M. Venkatasubba Rao at the Krishna District Lawyers' Conference held at Bezwada two months ago. The question of overcrowding at the Bar has been considered at length and various suggestions have been made which provoke thought and demand careful consideration. The extension of the B.L. course to three years would enable a more intensive and adequate study of the subjects included in the curriculum and would also have the incidental advantage of reducing the number of entrants to the Law College. Sir Tej Bahadur Sapru is in favour of instruction being provided in such branches of law as commercial law, including company law and industrial law, constitutional law, international law and conveyancing. In so far as a knowledge of these subjects will enable lawyers to specialise in particular kinds of work, such instruction would be useful and valuable. I believe it could not have been the intention of Sir Tej Bahadur Sapru to include these subjects in the list of compulsory subjects for the B.L. course. The addition of these subjects to the compulsory list would heavily overburden the course and interfere with the intensive study of the more essential subjects which now find a place in the curriculum.

I entirely agree with the suggestion made by Sir Tej Bahadur Sapru and by Sir M. Venkatasubba Rao that a voluntary division of labour may be made by our Advocates and that some of them may specialise in chamber practice, advising, con-

veyancing and drafting. But as admitted by Sir M. Venkatasubba Rao, our people have not learnt to appreciate the value of previous legal advice for the purpose of avoiding litigation. Ignorance of the desirability of consulting experts beforehand is a characteristic of our people not merely in legal matters, but also in matters like health and housing.

The suggestion made by Sir M. Venkatasubba Rao that young lawyers should settle in village parts and contribute to the work of rural reconstruction may be suitable to the lawyers who wish to spend their retirement in rural areas, but cannot possibly appeal to the budding lawyer who wishes to earn a living by the exercise of his profession. I do not believe that there is remunerative work in the way of advising and conveyancing, waiting for the lawyer in the village, and sufficient to attract him. There may be some scope for employment in larger areas like the Taluk headquarters. As pointed out by Mr. Justice Varadachariar, the result of encouraging the young lawyer to settle in villages will be that he will lose no time in discovering that his only chance of earning a subsistence would consist in fomenting litigation. While the advent of the doctor to village parts would be beneficial by promoting health, the settlement of the lawyer in a village is more likely to prove a curse than a blessing.

Another interesting suggestion is the provision of legal aid for the poor litigant to be financed by a tax on the higher legal incomes. The suggestion will have to be considered from many aspects, including the danger of encouraging the passion for litigation, the prolongation of delays in the administration of justice and the difficulties attendant upon the selection of competent lawyers without favouritism.

In the course of his remarks on unemployment in the legal profession, Sir Tej Bahadur Sapru seems inclined to recommend an increase of the judiciary to be recruited from the Bar. No increase in the number of Courts or judges could possibly provide employment for the hundreds of unemployed Advocates in the profession. But even if it could, the increase of Courts or judges will have to be decided with reference to the needs of the administration of justice and the financial resources of the country, and not from the point of view of employment for lawyers.

The problem of unemployment in the legal profession is not more acute than in the case of other professions and occupations. It is only one aspect of a problem affecting the whole country and the only solution is the opening up of other avenues of employment which must depend upon an increase in the wealth of the country by the creation of new industries and increase of production and the diversification of occupations incidental to the complex economic structure of a modern State.

In conclusion, I must thank you for the honour you have done me in inviting me to preside on this gladsome occasion in spite of the fact that I am not on the roll of Advocates. It only remains for me to offer my heartiest wishes for the long life, prestige and prosperity of the Association to which we are all proud to belong, and to express my hope that the members of the profession may exercise a salutary influence on public affairs and contribute to the orderly evolution of a strong and united nation and the all-round progress of this great country.

SUMMARY OF ENGLISH CASES.

MARQUESS OF ZETLAND *v.* DRIVER, (1939) 1 Ch. 1.

Sale of land—Restrictive covenants—"Vendee not to do or permit anything to be done which in the opinion of the vendor may be a public or private nuisance or detrimental to the vendor and the owners or occupiers of any adjoining property or to the neighbourhood—Validity of the covenant—Form of injunction.

A clause in a conveyance of land provided that "the purchaser to the intent and so as to bind as far as practicable the property conveyed, into whosesoever hands the same may come, and to benefit and protect the vendor's land remaining unsold or as shall be sold by the vendor or his successors in title with the express benefit of the covenant, covenants with the vendor that the purchaser will at all times observe, perform and keep the said stipulations contained in the second schedule. The second schedule by clause (*d*) provided *inter alia* that no act or thing shall be done or permitted thereon which in the opinion of the vendor may be a public or a private nuisance or prejudicial or detrimental to the vendor and the owners or occupiers of any adjoining property or to the neighbourhood." The vendee sold the premises to the first defendant with notice of the restrictive covenants. The first defendant with the second defendant started the sale of fried fish at the premises for consumption off the premises. The successor in title of

the vendor, on complaints received, formed the opinion that such sale was detrimental to the amenities of the neighbourhood and to his own property. He therefore applied for an injunction. Bennet, J. (1937 Ch. 651) dismissed the action on the ground (1) that the plaintiff cannot sue as he was not the original covenantee and (2) the plaintiff had no right to enforce the covenant as he was not the owner of any land to which the benefit of the covenant had been effectually annexed. On appeal,

Held, in forming his opinion the plaintiff was in no sense performing a judicial or quasi-judicial function and was under no obligation to give the respondents an opportunity of being heard. The plaintiff is entitled to the benefit of the covenant and *prima facie* entitled to enforce it against the defendant who took their land with notice of the restrictions. The injunction must be limited to fried fish, and the injunction must be confined to so long as the plaintiff or other successor in title of the original vendor retains unsold any part of the property for the benefit of which the covenant was imposed.

In re NICHOLSON'S SETTLEMENT: MOLONY *v.* NICHOLSON. (1939) 1 Ch. 11.

Power of appointment—Settlement—Power to appoint in favour of one—Prior attempt with trustees of settlement to secure a benefit for appointor—Failure of—Later exercise of power in favour of the object of the power—Motive to defeat the trustees —If exercise of power fraud on the power.

A woman had a power of appointment which she could exercise in favour of any husband that may survive her for his life or for any less period and upon such conditions and with such restrictions as she shall think fit. In 1933 when she was over 80 years of age she wanted to make a provision for certain relations with whom she was living and she therefore negotiated with her relations and trustees of the settlement that if she should release her power of appointment, they should give her half of the capital to enable her to dispose of it as she pleased. Since they did not agree, she married one N. Q. in 1934 and by a deed of later date she exercised the power of appointment in favour of that husband. She died in 1936. It was contended that the appointment was bad as a fraud on the power of appointment.

Farwell, J., held in (1938) 1 Ch. 308, the question of a fraud on a power of appointment where there is one object and one object only of the power, differs widely from the question of a fraud on a power by which the fund can be given to one or more

of several objects. Where there is one object only of the power it is impossible to establish a fraud unless there is evidence of some arrangement between the appointor and the appointee, not necessarily a legal bargain, but some arrangement under which the appointee is to give effect to the purpose of the appointor to benefit some one other than himself. The Court of Appeal affirmed the judgment.

In re MAVILLE HOSE, LTD., (1939) 1 Ch. 32.

Companies—Companies Act, 1929, S. 214—Practice—Discovery—Liquidator asking for order against a director for examination as witness and for discovery and production of certain documents—Premature and oppressive—Discretion of Court—Procedure where order is improper.

In a voluntary liquidation, the liquidator obtained an *ex parte* order from the Registrar against a director to attend in chambers to be examined on behalf of the liquidator under S. 214 of the Companies Act and also requiring him to produce certain documents, books, papers, etc. (detailed in a schedule) in his custody or power in any wise relating to the company. The director applied for the discharge of the order for production of documents, etc., on the ground (1) that the documents etc., were not in his custody or power, and (2) that the order is oppressive and as such ought not to be made in the discretionary jurisdiction of the Court. The liquidator contended that the proper procedure was to appear before the Registrar and refuse to produce the documents and that the order has been made properly in the exercise of the Court's jurisdiction.

Held, if an order to produce documents etc., is made the proper course is to ask that it should be discharged so far as it is claimed that it is an improper order.

The order for production of documents is oppressive in the special circumstances of the case. It is very important in exercising a jurisdiction under S. 214 which is in any case an inquisitorial jurisdiction to be careful not to allow the section to be oppressive as between the company on the one hand and a third party on the other hand against whom it is contemplated that hostile action may be taken.

In re OCEANIC STEAM NAVIGATION COMPANY, LTD., (1939) 1 Ch. 41.

Company—Companies Act, Ss. 153 and 154—Application for sanction of scheme—Arrangement in excess of the powers defined by memorandum—Competence of company to enter into—If Court can sanction.

A company in insolvent circumstances applied to the Court under Ss. 153 and 154 of the Companies Act, 1929, for an order sanctioning an arrangement which was approved by the creditors but opposed by the shareholders. The scheme involved the transfer of the whole of the assets and undertaking of the company to a new company to be formed for the purpose. The old company had no power as a going concern to sell and dispose of its whole undertaking.

Held, if there is no power in the memorandum to dispose of its undertaking, Courts should not under S. 153 sanction a sale as part of a scheme, though the scheme is quite proper.

In re A DEBTOR: *Ex parte* THE DEBTOR *v.* THE PETITIONING CREDITORS AND THE OFFICIAL RECEIVER, (1939) 1 Ch. 145.

Bankruptcy Act, S. 5, sub-S. 3—Petitioning creditor privy to appointment of trustees under deed of assignment—Validity of petition based on the deed of assignment.

The petitioning creditors who were privy to the proceedings appointing trustees under deed of assignment should not take advantage of a situation in the creation of which they were themselves acquiescing parties. The case is one in which under S. 5, sub-S. 3 of the Bankruptcy Act, 1914, no receiving order ought to be made.

In re A DEBTOR, (1939) 1 Ch. 225.

Sale of Goods Act, S. 4, sub-Ss. 1, 3 and S. 35—Oral contract for sale of goods of over £10 value—If enforceable.

Appellant was a builder and the respondents were manufacturers and suppliers of certain kitchen fitments. On 3rd March, 1938, appellant's brother and authorised agent orally ordered 5 kitchen fitments. Respondent orally accepted the order. Appellant recorded the order and the price of goods in his purchase day book. On 18th March, 1938, the goods were taken by the respondent to appellant's premises and delivered to an employee of the appellant. The goods remained in appellant's premises till 12th April, 1938. On 29th March, 1938, the appellant executed a deed of assignment for the benefit of his creditors. On 12th April, 1938, respondents presented a petition for a receiving order. The total indebtedness of the appellant to the respondent excluding the value of these 5 kitchen fitments was under £50. The question was whether there was an enforceable contract with regard to the 5 kitchen fitments.

Held, there was an enforceable contract and there can be a valid receiving order on the petition.

NOKES *v.* DONCASTER AMALGAMATED COLLIERIES, LIMITED, (1939) 1 K.B. 70.

Master and servant—Company—Contract of service with—Transfer of rights, powers and liabilities to another company under S. 154, sub-Ss. 1 and 4 of the Companies Act, 1929—If includes contract of personal service.

A eompany with whom the appellant had a subsisting contract of service, with the sanction and under the orders of Court under S. 154 of the Companies Act, 1929, transferred their "property rights and powers of every description" to the respondent company. The appellant continued to serve and receive wages for four months after the transfer believing himself to be working at the old company under the original contract of service. On October 7, 1937, the appellant absented himself without cause and the respondents obtained an order from the justices for 15*s*. damages and 10s. costs against the appellant. The appellant contended that he had no contractual relationship with the respondent and the transfer under S. 154 cannot include rights under a contract of personal service. On a case stated by the justices,

Held, the words of S. 154 of the Companies Act, 1929, are wide enough to include rights arising out of contracts of service with servants and therefore a contract of service was in existence between the appellant and respondents.

BARNES *v.* HELY HUTCHINSON, (1939) 1 K.B. 93.

Income-tax Act (1918), Sch. D, Case V—Shareholder (resident in England) of a foreign company not liable to British income-tax—Foreign company's income derived in part from dividends on shares in British companies tax on which deducted —Relief from double taxation.

The respondent owned certain 8 per cent. cumulative preference shares in an Indian company whose issued capital comprised both preference and ordinary shares. The company owned a large number of ordinary shares in two British companies the whole of whose profits were assessed to United Kingdom income-tax. The Indian company received during the year ending April 5, 1931, dividends upon its shares in the British companies. The profits of the British companies had borne United Kingdom income-tax which was deducted from the dividends. On June 22, 1931, the Indian company paid the dividend on its preference shares by rupee warrants without deduction of tax. The full amount of dividend was included in the aasessment of the respondent. The

respondent claimed, that, as part of the dividend (44·12 per cent.) was paid out of the taxed dividends received by the Indian company from the British companies it should not again be subjected to United Kingdom income-tax in his hands.

Held [affirming the decision of Lawrence, J., in (1938) 1 K.B. 469], the appellant is entitled to relief from double taxation for the portion of the dividend representing taxed profit of the British companies.

Gilbertson v. *Fergusson*, (1881) 7 Q.B.D. 562, applied.

MYERS *v.* ROTHFIELD, (1939) 1 K.B. 109.

Solicitor—Delivering a defence with knowledge that it was not likely to succeed—Causing to be filed inadequate affidavits of documents which solicitor could not help knowing were false—If misconduct calling for exercise of punitive powers of the Court—If solicitor to be made to pay costs personally.

The plaintiff in an action against the defendants for defrauding her of moneys and shares by making her invest in a worthless company obtained a judgment for £9,400 16*s*. 1*d*. It appearing unlikely that the plaintiff would be able to recover either the judgment amount or costs from the defendants, the plaintiff by her counsel asked that the solicitors for the defendants should be ordered to pay the plaintiff the costs of the action on the ground of professional misconduct in filing with knowledge that it was not likely to succeed a defence putting the plaintiff to proof of her allegations and also filing inadequate affidavits of documents which the solicitor could not help knowing were false. It was proved that a managing clerk of the solicitor had the conduct of the case and at length when the solicitor intervened a further and adequate affidavit of documents was obtained. Singleton, J., held that the solicitor was not guilty of misconduct in allowing the defences to be delivered but was guilty in allowing inadequate and false affidavits of documents to be filed and ordered the solicitor to pay 1/3rd of the plaintiff's costs of the action and 2/3rd of the costs of the application. On appeal

Held (Greer and Slesser, L.JJ., MacKinnon, L.J., dissenting). the punitive powers of the Court can only be exercised when the solicitor has himself been guilty of misconduct and he cannot be made liable because a clerk whom he was entitled to trust has been guilty of the conduct complained of. Per *MacKinnon, L.J.*, on principle the solicitor ought to be held responsible for the misconduct of his clerk.

TATEM, LTD. *v.* GAMBOA, (1939) 1 K.B. 132.

Contract—Charter of ship—Frustration of adventure by seizure of ship—Liability of charterer for hire.

The plaintiffs as owners chartered and delivered to the defendant an agent of the Republican Government of Spain the steamship "Molton" for thirty days from July 1, 1937. On July 14 the ship was seized by a Spanish Nationalist ship and was kept in custody until September 7. She was re-delivered to the plaintiff on September 11. The defendant had paid in advance hire up to July 31 and on August 18 intimated to the plaintiff he would have nothing more to do with the ship. Plaintiff claimed hire for the period from August 1 to September 11.

Held, the performance of the charter was frustrated from the time of the seizure and the foundation of the contract had been destroyed. Though the parties must have had or must be deemed to have had the matter in contemplation, the doctrine of frustration is not prevented from applying.

JOHN *v.* MENDOZA, (1939) 1 K.B. 141.

Bankruptcy—Creditor abstaining from proving and debtor agreeing to treat debt as subsisting—Annulment reciting payment of debts in full—Subsequent suit—If barred by estoppel by record.

The defendant was adjudicated bankrupt on 4th September, 1935 and the adjudication was annulled in April 1937 on the ground that the defendant had paid his debts in full. The plaintiff at the defendant's request had abstained from proving in the defendant's bankruptcy on the defendant agreeing to treat the debt as subsisting. The present action to recover the amount was commenced after the annulment.

Held, the order of annulment reciting payment of all debts in full creates an estoppel by record and the plaintiff is estopped from coming into another branch of the High Court and contending that a debt is due to him. The plaintiff took no steps to get a new agreement for fresh consideration.

GROOM *v.* CROCKER, (1939) 1 K.B. 194.

Solicitor and client—Solicitor for insured admitting negligence without authority of client but under instructions from his insurer—Duty to client to consult when in doubt and keep informed—Breach of—Liability—Admission of negligence—If a libel—Damages—Nature and measure of—Motor insurance—Term that

insurer shall have absolute conduct and control of all proceedings against assured—If can require the insured to admit negligence.

The respondent's policy of motor insurence contained a term as follows:—"The Society shall if and so long as it so desires have absolute conduct and control of all or any proceedings against the insured (including arbitration and negotiations).

There was a collision between the respondent's car, driven by himself, with his brother as a passenger and a motor lorry owned by T. Brothers. The respondent's brother who was seriously hurt brought an action against the respondent as well as T. Brothers. The appellants were instructed by the insurer to act as respondent's solicitor. T Brothers' driver's negligence was the sole cause of the collision. The driver of T. Brothers' lorry had been convicted meantime for driving to the danger of the public. The insurers paid the respondent direct for the damage to his car, but for his personal injuries he had to claim against T. Brothers whose insurer caused a defence to be put in denying liability and alleging that the collision was caused by the respondent's negligence but they paid into Court (with denial) the sum of £100 which the respondent subsequently took out. The two insurance companies put their heads together in a plan for reducing their total pecuniary liability. Both companies knew that the respondent was not liable for the collision and there was no risk of his being held to blame, while in the action by the respondent's brother a heavy verdict looked inevitable against T. Brothers. The two insurers made a fifty-fifty pooling agreement under which T. Brothers were to be absolved and the respondent's negligence to be admitted. The inducement for the agreement was the bringing into the pool another case altogether in which the respondent's insurers were interested to which they had no defence. In pursuance of the agreement, the appellant on the instructions of the insurers delivered a defence on behalf of the respondent admitting negligence but denying damages. A judgment followed in the respondent's brother's action for damages against the respondent.

The present action was brought by the respondent against the appellant for (1) damages for breach of duty as solicitors expressed alternatively in contract and in tort and (2) damages for libel.

The defence was that the appellant acted on the instructions of the insurance company and had the respondent's instructions and authority through them.

Held, the tie between solicitor and client is contractual and it is an incident of that duty that the solicitor should consult with his client in all questions of doubt which do not fall within the express

or implied discretion left to him and should keep the client informed to such an extent as may be reasonably necessary according to the same criterion. There is today no common law duty similar to that which survives in the case of a bailee or carrier and no action lies in tort for breach of the above duties.

The term in the policy giving the insurer an absolute right of control of their assured's defence is subject to certain implied boundaries and limitations. The insurer was bound to exercise a real discretion upon each question after due consideration of the circumstances of the particular case. The policy conferred on the insurer no right to call upon the appellants to act on their mandate and the appellants derived no authority from them for what they did. The appellants are liable for breach of their contractual duty to the respondents. There cannot be any damages for injury to the respondent's reputation or feelings due to breach of contract.

The letter by appellant admitting negligence on the part of the respondent was capable of a defamatory meaning and the respondent is entitled to hold his judgment for £1,000 on the issue of libel.

UXBRIDGE PERMANENT BENEFIT BUILDING SOCIETY *v.* PICKARD, (1939) 1 K.B. 266.

Principal and agent—Fraud committed within agent's ostensible authority—Liability of principal for damages.

The defendant was a solicitor practising in London with a branch office at Slough managed by Conway who with the help of some forged title deeds induced the plaintiff to advance a loan on a fictitious mortgage. In a claim for damages for the fraud of the defendant's agent,

Held, where a fraud is committed by an agent within his ostensible authority the principal is liable.

Lloyd v. *Grace Smith & Co.,* (1912) A.C. 716, followed.

MARTHEWS *v.* MARTHEWS, (1939) P. 97.

Divorce—Prior petition for judicial separation—Withdrawal—Subsequent petition for divorce on the ground of desertion—Effect of first petition on desertion.

The petition for judicial separation created an interregnum at least, in the running of the period of desertion and precluded the petitioner from pleading that the period of desertion was running during the time that the suit was being maintained.

Stevenson v. *Stevenson,* (1911) P. 191, followed.

WALTON *v.* WALTON, (1939) P. 104.

Divorce—Petition founded on adultery dismissed—Second petition on the ground of desertion—Suspension of period of desertion during pendency of first petition.

Held, following *Marthews* v. *Marthews*, (1937) P. 97, the effect of a petition for divorce or judicial separation is to suspend the legal obligation upon the spouses of living together. So long as the legal obligation is in abeyance there can in law be no desertion.

PRATT *v.* PRATT, (1939) P. 117 (C.A.): (1939) 1 All. E.R. 503 (C.A.).

Divorce—Desertion—Refusal by husband to see or discuss the position with deserting wife—If desertion without cause.

When two married persons are living apart in circumstances which constitute desertion of the one by the other and the guilty party writes to the other and asks for an interview to discuss the position, there is a duty on the party receiving that request at least to see the other spouse and give him or her an opportunity of saying what he or she wishes to say. When the husband refuses to see or discuss the position with the wife the desertion by the wife is not without cause.

JOTTINGS AND CUTTINGS.

THE HON'BLE MR. JUSTICE B. SOMAYYA.

The solemn ceremony of the swearing in of Mr. Justice Somayya was gone through on Thursday, the 2nd February, 1939, in the presence of a large gathering of Advocates and the staff of the High Court, before a Bench consisting of the Hon'ble the Chief Justice, Mr. Justice Varadachariar, Mr. Justice Burn, Mr. Justice Gentle and Mr. Justice Stodart. After the new Judge assumed his seat on the Bench the Advocate-General offered him the felicitations of the Bar as follows:—

" My Lord on the assumption of your high office, as one of His Majesty's Judges, permit me, on behalf of the Bar, to offer our hearty felicitations. If my recollection serves me right, after a distinguished career in the University, when you had to start your work at the Bar, with your innate sense of modesty, you felt a certain nervousness in resolving to join the profession in Madras and discussed the situation with me, a comparative junior in the

profession then, before you entered into articles of apprenticeship under the late Mr. P. Narayanamurthi. Since then, by your ability and learning, your prodigious industry, the quickness with which you mastered the facts of any complicated case and your sole and undivided attention to the profession, you have fought your way up and become one of the acknowledged leaders of this Bar. Your Lordship has had experience on every side of work of this Court and in the mofussil. It is a source of pride and satisfaction and no small consolation to me to recall that, in several cases, both in the mofussil and in this Court, we appeared together, an experience which enables me to speak with an intimate acquaintance of your work and attainments. Your unostentatious simplicity, your winsome manners, your discreet reticence, when called for, your unfailing courtesy to your opponents and your readiness to oblige your friends at the Bar, have endeared you to the profession. Let me wish Your Lordship a long and distinguished career on the Bench, dispensing justice without fear or favour, in fear of God and in fear of no man, and maintaining the best traditions of this High Court, which has always stood high in the estimation of the public and of the profession all over India."

Mr. Justice Somayya, in reply to the good wishes, thanked the Advocate-General, and said: "I appreciate very much your kind words of welcome, as you have spoken them from your personal knowledge of my career at the Bar from the very start. As you are aware, the duties and responsibilities of an Advocate, are very important, and your reference to my success at the Bar is particularly pleasing to me. But I conceive the duties and responsibilities of a Judge are even more onerous and I enter upon my career on the Bench with a full consciousness of that fact. I am sure I can always count upon the co-operation of the Bar in the discharge of my duties. It is easy for an Advocate to espouse the cause of a client, but it is much more difficult for a Judge to decide between conflicting claims. It remains to be seen how far I shall be successful in my new sphere of work, but I assure you, Mr. Advocate-General, that I shall constantly bear in mind the solemnity of the Oath that has been administered to me, this morning, by my Lord the Chief Justice."

THE HON'BLE MR. JUSTICE M. PATANJALI SASTRI.

On Wednesday, the 15th of March, the new Judge was solemnly sworn in before a Special Bench consisting of the Chief Justice, Mr. Justice Burn, Mr. Justice Venkataramana Rao, Mr. Justice Lakshmana Rao and Justice Sir Abdur Rahman.

The Advocate-General (Sir Alladi Krishnaswami Aiyar) conveyed to him the felicitations of the Bar:

"In giving expression to my sentiments and affectionate regard on this happy and auspicious occasion, I have necessarily to put a certain restraint upon myself, if only by reason of my intimate association with your Lordship for several years at the Bar from the commencement of your professional career, nay, from the days of your apprenticeship. By your learning and ability, your keen grasp of the complicated facts of the cases in which you were engaged, your single-minded devotion to your profession, by the high professional standards which you maintained and your skill as an advocate, you have fought your way up to the front ranks of the profession and deservedly attained a leading position at the Bar winning the confidence and esteem of the Judges before whom you practised.

"With your intimate knowledge of Income-tax law which is becoming an increasingly difficult and complicated branch of the law to interpret and administer, your large experience of Nattukottai Chetti litigation which, even at the present day, contributes a good portion of the work of this Court, your acquaintance with Chetti customs and usages and their banking institutions, your Lordship would be a great source of strength to the Court in the different spheres of its work.

Let me conclude by wishing you a distinguished career on the Bench and may your Lordship long continue to dispense justice in keeping with the highest traditions of this Court and of the Bar."

Mr. Justice Patanjali Sastri's reply.—"Mr. Advocate-General and friends of the Bar,—I thank you very much for the kind and glowing terms in which you have welcomed my elevation to the Bench. I am not vain enough, however, to take them at their face value. I am alive to my shortcomings and my sense of them is heightened as I remember that I have been called upon to take the place of a great Judge who now adorns the Federal Court. But I have this advantage that in the discharge of my new duties and responsibilities, I have before me an example which I could emulate and follow to the best of my ability.

Mr. Advocate-General, this is not the occasion for me to indulge in reminiscences, but your presence here to greet me on this occasion inevitably recalls to my mind the fruitful and stimulating association with you in many notable causes in the early days of my career at the Bar, the memories of which I have always cherished in grateful remembrance.

How far I shall rise to the new responsibilities, time alone will show, but I can assure you that it shall be my constant endeavour to discharge conscientiously the duties of my office and I hope to have a full measure of co-operation from the Bar in that task. And if I am fortunate enough at the end of my new career to secure from the Bar and the wider public a verdict as appreciative as the sentiments you have now expressed I shall feel more than gratified. I thank you once again, Mr. Advocate-General, for the very kind welcome you have extended to me on this occasion."

Constitutions.—The beginning of the twentieth century will probably be regarded as an experimental period in the growth and making of national constitutions: the growth of those which are already established; the making of new ones. There has been no doubt about the growth of the British and American constitutions. In form unchanged, each shows practical development, the British especially in the consolidation of Mother Country and Colonies in the British Commonwealth of Nations. Elsewhere new forms are being tried, but, as the Prime Minister reminded his hearers at the jubilee dinner of the Foreign Press Association on Tuesday night, history teaches us that no form of government ever remains the same, and the subordination of individual independence to something which is called the State, but which, as he also said, only means those who for the time being rule the State, may be only a passing phase. While, however, these experiments may be watched with interest and without undue anxiety for their ultimate results, we may be confident that our own country will still remain untouched by novelties:

The land where, girt with friends or foes,
A man may speak the thing he wills.

—L.J. 1938, p. 415.

A New Point in Tort.—First of the legal novelties of the week is undoubtedly *Owens* v. *Liverpool Corporation*. A collision between a tram and a hearse, due to the negligence of the tram driver, resulted in the displacement of the coffin containing the body of a man on the way to his last resting place. The mourners, near relatives of the deceased, witnessed the accident and suffered in consequence the shock which would naturally be caused by the incident; and they claimed damages in respect thereof.

Deputy Judge Harrison, at the Liverpool Court of Passage, held that the plaintiffs did in fact receive injury as the result of seeing the damage to the hearse and the displacement of the coffin, and he assessed the damages as follows: *75l.* for the mother of the

dead man; 15*l.* for the uncle; 100*l.* for the cousin; and 11*l.* for the cousin's husband. In his view of the law, however, it was necessary, in order to establish legal liability, that there should be apprehension of injury to some living human being, or the sight of such injury to a human being; and on that view his judgment was for the defendants. He left it to the Court of Appeal to say whether his view of the law was right or wrong.

MacKinnon, Goddard and du Parcq, L.JJ., accepting the Deputy-Judge's findings of fact, and feeling they ought to accept his findings as to the amount of damages, held that the plaintiffs were entitled to recover the damages as assessed and they allowed the appeal with costs.

Leave to appeal to the House of Lords was given, but only on condition that the Liverpool Corporation undertook to pay the plaintiff's costs of such appeal in any event. The Court observed that the case raised a point of principle of general importance.

In this leading case counsel were Mr. R.H. Forrest for the appellants, and Mr. Glynn Blackledge for the respondents; and the solicitors were Messrs. Neville, Mullen and Co., Liverpool; Mr W.H. Baines, Town Clerk, Liverpool.—*L.J., 1938, p. 426.*

More Cat.—Continuing to speak (in despite of protests) with the greatest respect whenever I dare to speak of any judge, I do so now and with sincerity, making mention of Hilbery, J. A good judge, a good man; a golfer better than his handicap; a sailor who upon occasion can talk stirringly and accurately of the high seas and deep sea sailormen; and who, while conceding full marks on their merits to steam, internal combustion, auxiliary and other modern engines and contraptions aboard ship, can still regret, like a true mariner, the passing of sail.

So when, at Glamorgan, he imposed a severe sentenee on a fruit salesman "so that others may know that seamen in liquor who have been paid off cannot be made the prey of those cruel enough to try and rob them," the heart warmed to his words and felt that they were good. Yet do I crave indulgence to express doubt and some.wonder at the Judge's seeming faith in the deterrent and exemplary effect of those 15 lashes with the "cat".

The "cat" was long ago abolished in the Navy, and yet our naval ratings, I assert, are none the worse. He is no "flogging judge", and he made it plain that he considered the 'cat' useful only in certain cases, and in respect of persons, "not a few—as every judge knows—who would commit crimes which showed them to be too brutal to be brutalised or too depraved to be reached by

reformative treatment. Such punishment", said he, "is therefore still a necessary adjunct of justice."—*L.J., 1938, p. 427.*

Yet a Little While.—This was said at a time when, without one dissentient vote, Sir Samuel Hoare's Bill abolishing corporal punishment in those very cases had passed the House of Commons. His conclusion, based on "the great body of evidence collected by the Committee", was that flogging "is out of date; it does not deter the particular individual upon whom it is inflicted from offending again; it does not protect society from similar crimes in the future".

Well, the King's Bench Judges, as we know, thought and continue to believe otherwise; and for a little while yet the law permits them to order the "cat" in certain cases as and when they believe it to be appropriate to the crime.

One thing is certain: the fruit merchant was not deterred from his crime by the fear of flogging. And suppose flogging were a certain consequence following conviction for any specified kind of crime. Would that deter others? The King's Bench Judges cannot know from their experience as judges or as advocates. Death is a more fearful punishment than flogging; but death did not deter or prevent the commission of brutal crimes when death was the penalty. The evidence of history, so far as it is known, seems to be against the judges; for those crimes did not increase but diminished when death and flogging were taken away and replaced by other punishments and methods of reform.

Having said as aforesaid, I will frankly confess that there are offences for which it would give one great satisfaction to flog, hammer or otherwise maltreat an offender found in the act of committing certain acts of cruelty or violence. But such simple vengeance is for good reason denied us, and is in itself a crime; and the lawful post-trial triangle, long after the event, is a poor, if not a brutalising, substitute.—*L.J., 1938, p. 427.*

Memorial to Lord Oxford and Asquith.—According to the *Manchester Guardian* steps are in progress to have erected within the precincts of the House of Commons, where he spent the major part of his later years, a memorial to Lord Oxford and Asquith. It appears to be one of the unwritten rules in such matters that no memorial should be set up in the Houses of Parliament to a departed statesman until after the lapse of ten years from his death. That term of years has run since Lord Oxford and Asquith passed away, and, accordingly, it is fitting that he

should thus be remembered in the place of his later activities. While he played a prominent role in public life for many years, we like to recall him also as a distinguished member of the Bar. In his legal youth he "devilled" for Sir Henry James, who generously acknowledged the invaluable service he received from his "devil". In the biography of Sir Henry mention is made of a striking instance of valuable help received from Mr. Asquith as he then was. It occurred during the heat of the long drawn out battle between Bradlaugh and the House of Commons on the question of the oath. Mr. Gladstone, then Prime Minister, asked Sir Henry, who was at that time the Attorney-General, for a memorandum and history of the parliamentary oath. This task Sir Henry deputed to his "devil" who carried out his instructions with despatch and handed the result to Sir Henry who passed it on to Mr. Gladstone. Having read it, the Prime Minister said to Sir Henry, "I must thank you for the magnificent statement you have sent me touching the Bradlaugh affair." To this Sir Henry replied, "I have no personal claim to your gratitude, Mr. Gladstone, for I have not written a word of it." Being asked the authorship, Sir Henry told him that it was "a young man named Asquith," whereupon Mr. Gladstone said that "he must have a remarkable brain, for it is a masterly document". Following upon this, Asquith was introduced to Gladstone by Sir Henry, and in the young author of the memorandum Gladstone found one of his most devoted followers. Sometimes we are inclined to wish that the young lawyer who showed such promise in the legal sphere should have remained in the law, whose principles and whose practice he knew so thoroughly; it was not to be; but the legal bent so strongly marked in him was in due time handed on to his son whom we now know as Mr. Justice Asquith.—*S.L.J., 1938, p. 997.*

Baron Greer and Others.—The legal world congratulates Lord Greer on the barony conferred on him by His Majesty, whereby he becomes a Peer of the realm and will be available to hear cases and deliver judgments in the highest of our tribunals. The honour comes timely and soon after his retirement from the Court of Appeal; and his availability for work in the House of Lords and J.C. appeals is good news for those fortunate practitioners who may reasonably expect to have opportunities of addressing their arguments, good or bad, to a judge at once so courteous and so learned.

Sir Maurice Hankey on the same day became a peer, and lawyers and legislators are greatly pleased. Amongst the new Knights on the Prime Minister's list is that most popular of

Masters, Ernest Arthur Jelf, who is also the King's Remembrancer; and Gerald Dodson, Recorder of London, who can introduce and explain a Lord Mayor or welcome a King in choice and happy words; and who, despite his youth, can preside as judge in civil and criminal cases with all due learning, solemnity and humanity.

I would mention also in this place the Knighthood of Sir Harry Vanderpant, who, although he had no occasion to practise at the Bar for life or living, is a barrister of Gray's Inn and from his early student days has taken an active and helpful interest in the well-being of the Inn and its members. In public work he is Mayor of Westminster and Chairman of the London and Home Counties Traffic Advisory Committee.—*L.J., 1939, p. 12.*

Concerning Men of Straw and a Miss Tickle.—In the bad old days, according to report, it was the practice of fellows of the baser sort desiring employment as false witnesses to walk to and fro in Westminster Hall with a piece of straw stuck in the boot as a sign whereby lawyers might know that they were available for work in their profession or calling. An advocate in need of a witness might walk up to such a one and show him a coin; and if it was inadequate the wearer of the straw took no notice of the prospective employer and his fee. When the sum proffered was sufficient the witness showed signs of recognition and remembered all that was required. Hence, according to report, the expression "Man of Straw".

From the same source comes another and a different story. The great Erskine happened once to appear for a certain Miss Tickle, and thus addressed the court. "Tickle, my client, the defendant, my Lord . . . ." "Tickle her yourself, Harry", said his friend the Judge. "You're as well able to do it as I am".—*L.J., 1939, p. 13.*

BOOK REVIEWS.

MAYNE'S HINDU LAW (10th EDITION) by Mr. S. Srinivasa Aiyangar. Published by Messrs. Higginbotham & Co., Ltd, Mount Road, Madras. Price Rs. 21.

It has been well and truly stated that 'Mayne's Hindu Law became, from its first edition, a classic and from its third, nearly one of the sources of Hindu Law.' Certainly, it has become an indispensable book for study and reference, to the Hindu Lawyer and to the Judge who administers Hindu Law. In fact, before the Judicial Committee, it is a book of authority on intricate questions of

Hindu Law. The development of case-law and the progressive changes brought about by it necessitated the publication from time to time of many editions of the book. Mr. Mayne himself was responsible for seven editions. The task of the publication of the 8th edition was entrusted to Sir C. Sankaran Nair and the 9th to Sir V. M. Coutts-Trotter, Chief Justice of the Madras High Court. It is now 16 years since the 9th edition and a new edition is none too late. The Publishers, Messrs. Higginbotham & Co., could not have done better than entrusting the work to Mr. S. Srinivasa Aiyangar, one of the foremost Hindu Lawyers of the present day. During the interval between the last edition and this, more than at any earlier period, there has been a considerable addition to the body of case-law and important changes have been effected by Legislation from 1914 to 1938. The work of writing a treatise on Hindu Law has always been attended with peculiar difficulties. A thorough knowledge of the original sources and their technique and interpretation, a scholarly mind imbued with the love of truth and impartial research, a firm grasp of the legal principles evolved by Hindu jurists, a sound and well-informed historical sense and, last of all, prodigious industry and intimate acquaintance with the mass of Indian case-law, are absolutely necessary for the production of a standard treatise on Hindu Law. Fortunately for us, within the last 20 or 25 years, the wealth of material made available to the student of Hindu Law is, indeed, very great. Many original works, commentaries and digests forming the source of Hindu Law have been translated into English and some rare books hitherto buried in manuscripts have come to light. Distinguished Oriental Scholars have also made specialised study of some of the branches of Hindu Law and produced treatises on them. The task of an author is therefore rendered easier now than ever before and a modern editor is, in many respects, in a position of greater advantage than Mr. Mayne. In his preface to the 1st edition in 1878 Mr. Mayne says: "I cannot conclude without expressing my painful consciousness of the disadvantages under which I have laboured from my ignorance of Sanskrit. A really satisfactory treatise on Hindu Law would require its author to be equally learned as a Lawyer and an Orientalist." One can well realize the difficulty caused by the ignorance of the original sources and the absence of translations. Sir James Colvile in delivering the judgment of the Board in 11 M.I.A. 139, on the question whether under the Hindu Law received in the Benares School a childless Hindu widow had power to alienate any portion of the property of her husband was constrained to make the following significant observation: "We have not the whole Mitakshara. Mr. Colbrooke in his preface states that his

work included only an extract from that celebrated treatise comprising so much of it as relates to inheritance". A very important question had, therefore, to be decided by the highest judicial tribunal without having had access to the whole of the work which forms the main source of Hindu Law. All students of Hindu Law also know that much of the misconception in the earlier period of the administration of Hindu Law has been due to the mistranslation of the word "Sapinda" as used in the Mitakshara.

An edition therefore by an author who possesses the needed qualifications in a remarkable degree must surely be acclaimed by the legal world. Every topic here has received fuller treatment and the case-law has been brought entirely up-to-date. The learned author has, on questions arising in Hindu Law both in its historical aspect and in its application, arrived at sounder and more accurate conclusions than were possible a generation or two ago. It is refreshing to read the following words of Mr. Srinivasa Aiyangar conveying the net impression of his study of the original sources: "The one astonishing experience of any student of Hindu Law who carefully studies the Commentaries and Digests is the impression he receives of the remarkable ability and vision of the Hindu jurists, their grasp of principles and their seminal ideas. Once you get behind their unfamiliar garb and utterance, you get into contact with acute and accomplished lawyers who would be a credit to any age or country". These observations are worthy of being remembered by everyone who approaches the task of studying or reforming the Hindu Law. No doubt, it is possible for one to take other views than what the author has done on some of the questions such as the validity of inter-caste marriages and the place of custom and usage in Hindu jurisprudence. But one is glad to say that on certain other questions, the reader will readily endorse the opinion of the author, *e.g.*, on the Gandharva form of marriage and his well-informed criticism of the view that the limitation of five degrees applies only to Bandhus related through one's mother and not to cognates related through the father's mother. It is not feasible within the compass of a review to make a detailed reference to all the points and conclusions especially those raised by the Hindu Women's Right to Property Act (XVIII of 1937) in respect of which the learned author has brought to bear his fresh and well-informed outlook. Generally speaking, one will be justified in saying that the present edition is a complete authoritative treatise on Hindu Law containing ample material from the original sources as viewed in the fuller light of modern research and full reference to the up-to-date case-law reviewed from the standpoint of sound legal principles. It is well that the author has dealt with separately,

the two important subjects of the Marumakkathayam and Aliasanthana Law and impartible estates. Appendix III gives to the reader a clear conspectus of the Malabar Law brought up-to-date by modern decisions. It is gratifying to note that in his task the author has associated with himself a band of brilliant young lawyers whose industry, keenness and research must surely have been of great help to him. We are sure that the present edition will prove a land-mark in the study of Hindu Law and will be a work of inestimable value to every student of Hindu Law. A word of praise is due to the Publishers, Messrs. Higginbotham & Co., for their neat and accurate printing.

THE NEGOTIABLE INSTRUMENTS ACT, by Messrs. K. Bhashyam and Adiga (7th Edition), 1939. Published by The Eastern Law House, Calcutta. Price Rs. 12-8-0.

It is with pleasure that we welcome the seventh edition of Bhashyam and Adiga's Negotiable Instruments Act. Since the appearance of its first edition, it has become recognised as the leading text book on the subject which is one of increasing importance in the commercial life of the country. The merits of the work are so well known to the Judges and lawyers here, that it is not necessary to draw attention to its general features. It is however not out of place to point out that by the close association of the law of negotiable instruments to banking, this aspect has been fully brought out and discussed in the pages of this book. The appendices which are comprehensive in the nature of the topics dealt with have been re-arranged in the present edition and some amount of overlapping and repetition of matter has been avoided. The learned author has avoided the more easy method of collecting the cases under each head and giving them without offering any suggestions or opinions of his own on the points decided. He has offered his own suggestions and criticisms on the points dealt with which will have the salutary effect of provoking thought. We wish to draw special attention to the criticism at pages 176 *et seq.* of the recent decision of the Full Bench of the Madras High Court in *Satyanarayana* v. *Mallayya*, (1934) 68 M.L.J. 540: I.L.R. 58 Mad. 735, where the learned Judges held that in respect of a promissory note executed by the guardian of a minor which was not signed by her as such but which was executed for necessary purposes and she described herself as guardian in the body of the note, she was exempted from personal liability but the minor's estate was held liable. This branch of the law is in an unsatisfactory state and requires clearing up by legislation, if necessary, by reason of its importance and the conflict of the various

principles involved. One of the recent decisions of the Privy Council which has created a stir among the commercial interests and the investing public in this country is the case of *Secretary of State* v. *Bank of India, Ltd.*, (1938) 2 M.L.J. 169: L.R. 65 I.A. 286 (P.C.), which is believed to have impaired to the security of the holders of Government Promissory Notes. We should like to have had the opinion of the learned author on the correctness and implications of this decision. The book has increased in its size by the additional matter introduced in the present edition and the author has done well in not putting up its price appreciably on that account, with a view to place it within the easy reach of all practitioners. We have every hope that this edition will be even more widely used and appreciated by lawyers and Judges than its predecessors.

THE LAW OF REGISTRATION, by Mr. K. J. Rustomji, Barrister-at-Law (3rd Edition), 1939. Published by Messrs. Butterworth & Co. (India) Limited. Price Rs. 10.

The third edition of Mr. Rustomji's Law of Registration is as characteristic of the learned author as his other legal works for its thought provoking nature. His arresting mode of criticism of decisions can be judged from the prefatory note itself where two of the latest decisions, one of the Calcutta High Court and another of the Madras High Court, have been adversely commented on. The recent legislative changes in the Law of Registration and the judicial decisions have necessitated a practical re-writing of large portions of the book. For thoughtful suggestions and guidance and for clear statements of the law and effect of decisions on the subject, no book is more useful than Mr. Rustomji's Law of Registration. We have therefore every hope that this book will be consulted as one of the leading text books on the subject.

THE LAW OF THE INDIAN CONSTITUTION, by M. Ramaswamy, B.A. B.L. (with a Foreword by Professor A.B. Keith): Longmans, Green & Co., London. 21 *sh.* net).

There is no other subject now which has attracted greater attention from constitutional lawyers both in India and England than the Government of India Act of 1935. Indeed, the change into a federal constitution effected by the new Act, even if it is of the simplest type, cannot be considered so easy or less fraught with difficulty. Naturally, when we think of a country like India with large portions still under Indian Ruling Princes, the legal implications attendant upon an effective functioning of the federal consti-

tion such as the Government of India Act has provided, cannot be said to be of a nature quite parallel to the other federal constitutions of the World, like those of the Dominion of Canada and the United States of America. This feature is really peculiar to India and therefore the distinct legalism which is generally associated with a federal constitution must be more marked here.

The author of this well printed and elegantly got-up volume has tried in an adequate degree to impress upon us, in his introduction, the inevitability of a step like the Government of India Act, 1935, if at all India should move towards her goal of an honoured place soon among the Dominions in the British Commonwealth of Nations.

The first few chapters are devoted to an accurate and sumptuous history of the period leading to the passing of the present Act. In the chapters on Indian States and Federalism the real difficulties which could be anticipated in a legal discussion of the constitution are well dilated upon, and we have in the chapter on the 'Interpretion of the Constitution' a closely reasoned and erudite presentation of analogies from interpretations of the constitutions of the other existing federal countries. . No doubt, the innumerable sections of the Act have not been always dealt with accompanied by a closely running textual commentary, because, evidently, it does not come within the scope of this treatise. But there is ample valuable information in the form of case-law and precedents in necessary places, as when dealing with a chapter like that containing Legislative lists and powers.

To the student of Constitutional law requiring a correct picture of the Indian constitutional growth up to the present time with a view to enabling him to appreciate the character of the changes introduced by the present Act, this book has much to give. We have every reason to believe that even lawyers having to concentrate more upon important sections of the Act involving legal principles or sometimes problems peculiar to Indian federation, may not feel disappointed in securing the help that is necessary for an able elucidation of the Act.